

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES GONZALES,

Petitioner,

CIV No. 02-105 WJ/LFG

JOE R. WILLIAMS, Warden,
et al.

Respondents.

MAGISTRATE JUDGE'S FINDINGS
AND RECOMMENDED DISPOSITION¹

THIS MATTER is before the Court on Petitioner James Gonzales' ("Gonzales") Motion for Summary Judgment, filed April 11, 2002 [Doc. 11]. On January 28, 2002, Gonzales filed a § 2254 petition. On February 28, 2002, the Court ordered Respondents to file an answer within 30 days from date of service of the February 28 Order. [Doc. 5.] On April 1, 2002, Respondents timely filed their Answer.

Gonzales argues that summary judgment in his favor is appropriate because as of the date he filed his motion, Respondents had "ignored answering or presenting any facts of dispute to the claims of the present petition." Respondents' Answer was filed in a timely manner. Respondents had 30 days in which to file their response to Gonzales' petition, or until technically Saturday, March 30, 2002. When, however, a deadline falls on a weekend day, the period for filing runs until the next date

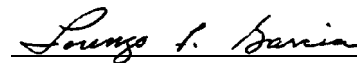
¹Within ten (10) days after a party is served with a copy of these findings and recommendations, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such findings and recommendations. A party must file any objections with the Clerk of the U.S. District Court within the ten-day period allowed if that party wants to have appellate review of the findings and recommendations. If no objections are filed, no appellate review will be allowed.

when the courts are open. Because the deadline for filing an Answer in this case was Monday, April 1, 2002,² Respondents' Answer was timely.

To the extent that Gonzales also argues there are no genuine issues of material fact to preclude summary judgment in his favor, even after considering the Answer, such a position is premature.

Recommended Disposition

That Gonzales' Motion for Summary Judgment [Doc. 11] be denied.



Lorenzo F. Garcia
United States Magistrate Judge

²The automated court docket in this case shows a filing date of April 2, 2002 for Respondents' Answer. However, the date on the pleading itself reflects an April 1, 2002 filing date. Even if Respondents' Answer were filed one day late, which did not happen here, the Court would decline to grant summary judgment on that basis alone.